S.B.CIVIL WRIT PETITION NO.8169/2007
(Shobha Ram Vs. State of Rajasthan & ors.)

Date of order : 17th December 2007

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.B.S.Deora for the petitioner

The petitioner in this writ petition seeks to raise the issue regarding operation and applicability of rule 7A (iii) of the Rajasthan Employment of the Persons with Disabilities Rules, 2000 ('the Rules of 2000') for the purpose of selections to the post of Teacher Gr.III under the Rajasthan Panchayati Raj Rules, 1996 ('the Rules of 1996').

The issue sought to be raised in this writ petition stands covered by the decision of this Court in a batch of petitions led by S.B. Civil Writ Petition No.210/2007: Bhanwar Lal Jat & Anr. Vs. State of Rajasthan & Ors., decided on 4th December 2007 wherein, after examining the said rule 7A (iii) of the Rules of 2000 this Court has held the same to be applicable for temporary appointments only and has observed,-

> "The second part of rule 7A (iii) occurring in the company of first part makes it clear that the entire of clause (iii) of rule 7A is concerned with temporary appointments; it provides that the condition or desirability of training/test/ experience would not apply for temporary appointment of a disabled person but its second sentence puts a rider that if such appointments

> be to any post where a particular training is essential, then the incumbent might be expected to complete such training within two years of such appointment**.** This "appointment" is only the said appointment i.e., the temporary appointment. This Court is inclined to agree with the interpretation put by the learned counsel for the respondents that rule 7A (iii) as a whole applies only for the purpose of temporary appointments and second part is only a rider to the first part. “

Apart from the aforesaid, and while assuming for the sake of arguments that rule 7A (iii) is applicable for appointment to any post, this Court has also examined, and answered in the negative, on the question if the qualifications of B.S.T.C./B.El..Ed. /B.Ed. requisite under the relevant rule 266 of the Rules of 1996 for the purpose of selections in question are merely of a particular "training" that could be dispensed with at the time of entry into the service while observing that ,-

> “It is ex facie evident that the qualification of B.Ed./B.S.T.C. and the like have been referred to and provided as ‘educational qualification’ and not merely of training as suggested on behalf of the petitioners. Whether under the second proviso that was added on 01.07.2004 by way Fourth Amendment Rules to the then existing clause (3) or under the proviso that has now been added on 01.12.2006 to the present clause (3) by way of Sixth Amendment Rules, such qualification of B.S.T.C., B.Ed. etc. have been referred as ‘educational qualification’; and such expression effectively negates the very basis of the submissions made on behalf of the petitioners that such B.S.T.C./B.Ed. be treated merely as a training for the purpose of operation of Rule 7A(iii) of the Rules of 2000.”

> "There appears considerable force in the submissions of the learned counsel for the respondents that the qualifications aforesaid have been provided in keeping with the requirements of minimum qualifications as required by the National Council for Teachers Education in its Regulations of 2001. The notification issued by NCTE placed for perusal before the Court prescribes the qualifications (that have been incorporated as such in rule 266 of the Rules of 1996) as 'minimum academic and professional qualifications'. It is true that in the said qualifications, one of the qualifications is of having diploma or certificate in basic teachers training of a duration not less than two years and that remains alternative to B.El.Ed. or B.Ed.; however, having such diploma or certificate is the requirement of minimum academic and professional qualification and is not the requirement of any such special training to which rule 7A(iii) of the Rules of 2000 is concerned with.

This Court has, therefore, concluded that,-

> "A comprehensive look at the Scheme of the Rules of 1996 and the purpose behind laying down of such qualifications, this Court has no hesitation in coming to the conclusion that the qualifications of B.S.T.C./B.Ed./B.El.Ed. as relevant for the said Rules are not of mere training relevant for the purposes of rule 7A (iii) of the Rules of 2000 but are those that of essential qualification by whatever nomenclature, the same are called or referred to."

> " Rule 7A (iii) of the Rules of 2000 being not intended to provide for any concession in the basic qualifications, cannot be resorted to for providing concession to a disabled person who is not holding such qualification."

In view of the aforesaid decision in Bhanwar Lal's case, this writ petition fails and is, therefore, rejected.

(DINESH MAHESHWARI),J.

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